

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-470-C - ORDER NO. 2002-808
NOVEMBER 27, 2002

IN RE: Application of Viva Telecom, LLC for a)	ORDER GRANTING
Certificate of Public Convenience and)	CERTIFICATE
Necessity for Authority to Operate as a)	
Reseller of Interexchange)	
Telecommunications Services.)	

✓ 10

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Viva Telecom, LLC (“Viva” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate, interexchange telecommunications services within the State of South Carolina on a resale basis. The Company’s Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 2001), S.C. Code Ann. § 58-9-520 (Supp. 2001) and the rules and regulations of the Public Service Commission of South Carolina.

The Commission’s Executive Director instructed Viva to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Viva’s Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Viva complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on August 22, 2002, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. John J. Pringle, Jr., Esquire, represented Viva. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Jerald Ricks, Operations Manager of Viva, appeared and testified on behalf of the Company. As Operations Manager, Mr. Ricks manages day-to-day operations at the Company. According to the record, Mr. Ricks has been involved in the telecommunications industry for over twelve years. A few of Mr. Ricks' job duties include ensuring implementation of sales and marketing activities for the Company, following the Company pricing levels, generating new accounts, and assuring high-quality customer relations.

Viva is a Utah limited liability company that has been authorized to transact business within the State of South Carolina. The Company does not intend to have offices in South Carolina. Therefore, Viva requests that the Commission waive Commission Regulation 103-610 by authorizing the Company to keep its books and records at its offices in Utah. Mr. Ricks testified that upon request, the Company will provide any such books and records to the Commission and/or the Staff on an expedited basis and at the Company's cost.

Although the Company's Application originally indicated that Viva intended to resell intrastate interexchange services to the public via prepaid calling cards, Mr. Ricks testified that the Company now resells the long distance telephone services of facilities-based interexchange carriers to its interexchange carrier customers. The record reveals

that Viva's carrier customers in turn will offer those services to the public. Additionally, Viva will also provide customer service functions for the prepaid calling cards that its customers sell. The Company does however, seek authority to operate in this manner as a reseller of intrastate interexchange telecommunications services on a statewide basis. Mr. Ricks also testified that Viva plans to market its services to prepaid calling card providers.

According to the testimony, Viva filed an appropriate surety bond with the Application in this matter. Mr. Ricks testified however, that in view of the fact that Viva will not be offering its services directly to the public, and because Viva's carrier customers will presumably be bound by the Commission's bond requirement, Viva requests that the Commission consider whether the bond requirement is appropriately applied to Viva.

The underlying carrier that Viva will utilize will be based upon Viva's analysis of facility cost, suitability and quality of service. Mr. Ricks testified that Viva will only utilize carriers properly certified by this Commission to provide service in South Carolina. The Company expects to utilize the interexchange carrier services of Global Crossing and BellSouth.

Viva is currently certified to provide telecommunications services in Arkansas, California, Florida, Georgia, Idaho, Kentucky, Mississippi, Nebraska, Nevada, North Carolina, Texas, Utah, and Washington. Mr. Ricks' testimony provides assurance to the Commission that Viva's tariff will comport with all Orders, Rules, and Regulations of the Commission. Additionally, Mr. Ricks testified that the Company will make all changes

suggested by the Commission Staff in order that the tariff so complies. According to the testimony, at the time of the hearing, Viva had not provided any intrastate telecommunications services within the State of South Carolina.

Mr. Ricks also testified that Viva has sufficient technical, financial, and managerial resources and the ability to provide the telecommunications services it seeks authority to provide in South Carolina. The testimony reveals that Viva's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. Jeddie Ricks is the Relations Manager for the Company. He became employed with Viva in 2001 and his duties, in part, include ensuring implementation of sales and marketing activities for the Company, performing special assignments, and providing information and communications accurately and as scheduled. Scott P. Cederlof is the Company's Information Systems Manager. Mr. Cederlof holds a Bachelor of Science in Economics from Brigham Young University and he placed in the top 2% of his class regarding the Series 7 and 63 Securities Exams. Regarding the Company's books of account, Viva uses Generally Accepted Accounting Principles (GAAP). Mr. Ricks testified that to the extent that South Carolina law or the Commission's rules require Viva to employ the Uniform System of Accounts (USOA), the Company requests that the Commission grant it the ability to use GAAP.

According to the record, Viva operates a customer service center, which handles all customer service requests. The customer service center is available from 6:30 a.m. to 11:30 p.m. Mountain Time, Monday through Friday and 8:00 a.m. to 10:00 p.m.

Mountain Time, Saturday and Sunday. Further, Mr. Ricks testified that Viva has a policy of responding to any billing or service inquiries within twenty-four hours. In the event that the inquiry requires further investigation on the part of the service representative, the customer is advised of the reasons for the need for additional inquiries and is given a date certain by which the inquiry will be addressed.

Regarding the benefits that South Carolina residents will receive from Viva's services and presence in South Carolina, Mr. Ricks testified that approval of Viva's application will serve the public interest by creating greater competition in the interexchange marketplace. Additionally, Mr. Ricks opined that approval will also provide consumers with a greater choice of billing options and long distance services for intrastate calls, promoting more efficient use of the underlying networks. Finally, Mr. Ricks testified that Viva's participation in South Carolina's intrastate telecommunications market will also expand the tax base and revenue sources for the State.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Viva is organized as a corporation under the laws of the State of Utah and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Viva is a provider of long distance services and wishes to provide long distance services in South Carolina.

3. Viva has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Viva to provide resold intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Viva for its resale of interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Viva shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. Viva shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not

constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for the interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2001).

4. If it has not already done so by the date of issuance of this Order, Viva shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Viva shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 with its final Tariff.

5. Viva is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to Viva's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Viva shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Viva changes underlying carriers, it shall notify the Commission in writing.

8. Viva shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Viva shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

9. Viva shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Viva shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Viva shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, Viva shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, Viva shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application and testimony at the hearing, Viva requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants Viva's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters in Utah. We also grant the Company's request to maintain its books in accordance with GAAP.

12. The record reveals that Viva no longer intends to sell prepaid interexchange calling cards to the public. The Company intends to resell the long distance telephone services of facilities-based interexchange carriers to its interexchange carrier customers. Further, these carrier customers will offer the prepaid calling cards to the public. Therefore, because Viva will not offer prepaid calling cards to the public, the Company is not required to post a five thousand dollar surety bond with the Commission. The license or permit bond that the Company filed with the Commission in its Application shall be returned to Viva.

13. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

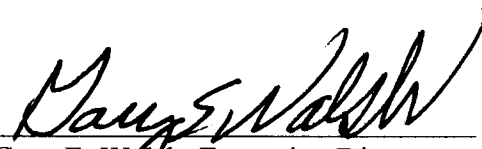
14. Viva is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director

(SEAL)